

DOCKET FILE COPY ORIGINAL

RECEIVED

DEC 15 2000

FCC MAIL ROOM

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re Applications of  
LIBERTY PRODUCTIONS,  
A LIMITED PARTNERSHIP

Et. Al.

For Construction Permit for  
New FM Channel 243C3  
Biltmore Forest, North Carolina

) MM Docket No. 88-577/

) File No. BPH-870831MI

To: The Commission

REPLY TO OPPOSITION TO  
JOINT REQUEST FOR APPROVAL OF SETTLEMENT

Liberty Productions, a Limited Partnership ("Liberty") by counsel herewith submits its reply to the Opposition to Joint Request for Approval of Settlement, filed December 5, 2000, by the Enforcement Bureau of the FCC (the "Bureau"), as follows:

1. While acknowledging that public interest benefits would result from the proposed settlement, the Bureau contends that its approval would also result in an immediate and tangible public interest detriment and could set an undesirable precedent with respect to future post-auction settlements.

2. The Bureau's contention that approval of the proposed settlement would be detrimental to the public interest appears to be primarily based upon the diminution in the amount of proceeds that would be received by the Treasury. While the Bureau argues that 47 USC 309(j)(7)(B) applies only to "prescribing

No. of Copies rec'd  
List ABCDE

46

regulations", it ignores the contention of the joint petitioners that that Section of the Act, as well as others, reflect the clear intent of Congress that any diminution of proceeds to the Treasury is not a factor that should be considered by the Commission in making public interest determinations.

In addition, the Bureau ignores the fact that, given the Commission's determination that it was not required by Congress to conduct an auction in this proceeding, there could have been no expectation by Congress that there would be any proceeds to the Treasury resulting from the award of the Biltmore Forest permit in any event.<sup>1</sup>

3. The Bureau also supports its opposition by disparaging the claimed public interest benefits of the settlement. In that regard the Bureau argues that resources expended evaluating Liberty's qualifications will have been wasted and that the settlement will not expedite the resolution of the proceeding, due to the need to consider BFB's qualifications. While it is certainly true that BFB's qualifications would be subject to evaluation and challenge, it is equally true that BFB has no unresolved character issues outstanding and that there would be one fewer applicant to raise objections. Obviously, Orion can be expected to raise every conceivable argument, as it did with

---

1. The Bureau questions (at Note 3) the amount of the refund that is intended by the contingency in the Settlement Agreement. In the interests of clarification the intention is that all all funds paid to date by Liberty, i.e., \$ 303,680.00, are to be refunded in full.

respect to the proposed settlement, given that doing so simply promotes its sole remaining interest in this proceeding, i.e., delaying the resolution of the proceeding as long as possible. However, this is a situation that the Commission, not Liberty and BFB, created.

4. The Bureau also opposes approval of the settlement on the basis that it would establish an undesirable precedent. While it is entirely legitimate to consider whether the requested action would establish an undesirable precedent, as BFB has explained thoroughly in its Consolidated Reply, the Bureau has ignored the unique nature of this case. The Commission determined that it had the authority to award permits by hearing or by auction in the unresolved comparative hearing proceedings. Beyond this case, only one comparative hearing case remains. Accordingly, any precedent established in this case is easily limited so as to apply only to that one additional case and no more. A more limited precedent can hardly be imagined.

5. The Bureau suggests that Liberty's decision to enter into the proposed settlement was premised upon post-auction challenges to its qualifications. Not only is this untrue, it represents a curious contention, given the Bureau's previous characterization of those challenges as meritless. The Bureau offers no evidence to support its suggestion and the Commission has no basis for disregarding the basis asserted by Liberty for its decision, i.e., its desire to expedite the conclusion of these protracted proceedings. In that regard it must be recalled

that it has been almost 14 months since Liberty won the auction and met its downpayment requirements. It has been over ten months since the Bureau filed comments affirming its view that Liberty was fully qualified to receive a construction permit. Yet, Liberty still has nothing to show for the thirteen years it has prosecuted its application in this proceeding, even after having won the auction and paid over \$ 303,680.00, an amount with respect to which it has now incurred over \$ 40,000.00 in interest expense. Meanwhile, the Commission continues to temporize, all the while permitting Orion to continue its illegal operation on the frequency at issue. That Liberty's disgust with the Commission's continuing delays was the obvious basis for its decision to enter into the proposed settlement should be readily apparent.

Respectfully Submitted

LIBERTY PRODUCTIONS,  
A LIMITED PARTNERSHIP

By: 

Timothy K. Brady  
Its Attorney

P.O. Box 71309  
Newnan, GA 30271-1309  
770-252-2620

December 15, 2000

CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that I have this 14<sup>th</sup> day of December, 2000, served a copy of the foregoing Opposition to Joint Request by First Class mail, postage prepaid upon the following:

John Riffer, Esq.  
Associate General Counsel  
FCC  
445 12th Street, SW  
Washington, DC 20554

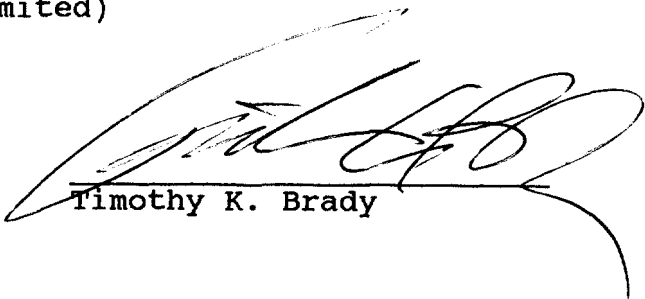
James W. Shook, Esq.  
Enforcement Bureau  
FCC  
445 12th Street, SW  
Washington, DC 20554

Donald J. Evans, Esq.  
Fletcher, Heald & Hildreth  
1300 N. 17th Street, 11th Floor  
Arlington, VA 22209  
(Counsel for Biltmore Forest  
Broadcasting FM, Inc.)

Stephen T. Yelverton, Esq.  
601 Pennsylvania Avenue, NW  
Suite 900  
Washington, DC 20004  
(Counsel for Willsyr Communications  
Limited Partnership)

Robert A. DePont, Esq.  
P.O. Box 386  
Annapolis, MD 21404  
(Counsel for Skyland Broadcasting Co.)

Lee J. Peltzman, Esq.  
Shainis and Peltzman  
1901 L Street, NW, Suite 290  
Washington, DC 20036  
(Counsel for Orion Communications Limited)

  
Timothy K. Brady